

1 HONORABLE RICARDO S. MARTINEZ
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9
10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE WESTERN DISTRICT OF WASHINGTON
12 AT SEATTLE

13 UNITED STATES OF AMERICA,

14 NO. 2:15-cv-00102 RSM

15 Petitioner,

16 DECLARATION OF DANIEL A. ROSEN
17 IN SUPPORT OF MICROSOFT'S BRIEF
18 REGARDING COMMON DEFENSES TO
19 ENFORCEMENT OF SUMMONSES

20 Respondents.

21 **NOTED FOR: November 6, 2015**

22 UNITED STATES OF AMERICA,

23 NO. 2:15-cv-00103 RSM

24 Petitioner,

25 v.

26 CRAIG J. MUNDIE, et al.,

27 Respondents.

28 I, Daniel A. Rosen, pursuant to 28 U.S.C. § 1746, declare as follows:

29 1. I am an attorney at Baker & McKenzie, LLP. I am admitted to the practice of
30 law in New York and Connecticut, and have been admitted *pro hac vice* in these consolidated
31 cases.

32 DECLARATION OF DANIEL A. ROSEN - 1
33 (Case Nos. 2:15-cv-00102 RSM & 2:15-cv-00103 RSM)

34 LAW OFFICES
35 CALFO HARRIGAN LEYH & EAKES LLP
36 999 THIRD AVENUE, SUITE 4400
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1 2. Attached and marked as Exhibit 1 is a true and correct copy of the IRS's
2 February 2014 Transfer Pricing Audit Roadmap, which was downloaded on September 16,
3 2015, from the IRS website (<http://www.irs.gov/pub/irs-utl/FinalTrfPrcRoadMap.pdf>).

4 3. Attached and marked as Exhibit 2 is a true and correct copy of the IRS's
5 "Proposed Timeline," for its 2004-06 audit of Microsoft, which was prepared for discussion at
6 a July 12, 2012, conference.

7 4. Attached and marked as Exhibit 3 is a true and correct copy of the IRS's
8 "Updated Timeline" for its 2004-06 audit of Microsoft, which is dated January 31, 2013.

9 5. Attached and marked as Exhibit 4 is a true and correct copy of the IRS's
10 timeline for its 2004-06 audit of Microsoft, which is dated May 30, 2013.

11 6. Attached and marked as Exhibit 5 is a true and correct copy of the client
12 testimonials page of Quinn Emanuel's website (<http://www.quinnemanuel.com/the-firm/client->
13 [testimonials/](#)), which was downloaded on July 10, 2015.

14 7. In response to Microsoft's questions regarding Quinn Emanuel's conflicts of
15 interest, the IRS provided Microsoft with a copy of a memorandum from Quinn Emanuel
16 entitled "Ethical Screen Language" and dated September 24, 2014. Attached and marked as
17 Exhibit 6 is a true and correct copy of this memorandum.

18 8. Attached and marked as Exhibit 7 is a true and correct copy of the Northern
19 District Court of California's order granting a motion for sanctions in *Apple, Inc. v. Samsung*
20 *Electronics., Ltd.*, No. 5:11-cv-01846-LHK (PSG), dated January 29, 2014.

21 9. Attached and marked as Exhibit 8 is a true and correct copy of John S. Gordon's
22 Notice of Appearance as counsel of record for defendants, filed in *Apple Inc. v. Samsung*
23 *Electronics Co., Ltd.*, No. 11-cv-01846-LHK, and dated October 14, 2013.

1 10. Attached and marked as Exhibit 9 is a true and correct copy of John B. Quinn's
2 Notice of Appearance as counsel of record for defendants, filed in *Apple Inc. v. Samsung*
3 *Electronics Co., Ltd.*, No. 11-cv-01846-LHK, and dated July 29, 2012.

4 11. In connection with a FOIA lawsuit filed on November 24, 2014, *Microsoft*
5 *Corporation v. Internal Revenue Service*, No. 1:14-cv-01982 (D.D.C.), the Department of
6 Justice produced a copy of the May 19, 2014, IRS-Quinn Emanuel Contract, bates stamped
7 Microsoft-FOIA-00169-229. Attached and marked as Exhibit 10 is a true and correct copy of
8 the IRS-Quinn Emanuel Contract that the Department of Justice produced to Microsoft.

9 12. Attached and marked as Exhibit 11 is a true and correct copy of the May 13,
10 2015, letter from Senate Finance Committee Chairman Orrin G. Hatch to IRS Commissioner
11 John Koskinen.

12 13. Attached and marked as Exhibit 12 is a true and correct copy of Internal
13 Revenue Manual ("IRM") Part 4.46.4.

14 14. Attached and marked as Exhibit 13 is a true and correct copy of IRM Part
15 1.2.13.

16 15. Attached and marked as Exhibit 14 is a true and correct copy of IRM Part
17 32.2.2.

18 16. I have reviewed the IRS's quarterly Priority Guidance Plans ("PGPs") issued
19 between the 2nd quarter of 2012 and the 3rd quarter of 2014, which was prior to the IRS's
20 promulgation of the temporary regulation under 26 U.S.C. § 7602. Based on my review, the
21 PGPs do not include any reference to the planning or issuance of the temporary regulation 26
22 C.F.R. § 301.7602-1T. Copies of the PGPs are available online, at <http://www.irs.gov/uac/>
23 Priority-Guidance-Plan. Attached and marked as Exhibit 15 is a true and correct copy of the
24 IRS's August 26, 2014, Priority Guidance Plan.

1 17. In connection with a FOIA lawsuit filed on March 11, 2015, *Microsoft*
2 *Corporation v. Internal Revenue Service*, No. 2:15-cv-00369 (W.D. Wash.) (the “FOIA Case
3 No. 15-369”), the Department of Justice produced a March 28, 2014, email from William
4 Spatz to A M Gulas, bates stamped IRS-000534. Attached and marked as Exhibit 16 is a true
5 and correct copy of the March 28, 2014, email.

6 18. In connection with FOIA Case No. 15-369, the Department of Justice produced
7 a May 30, 2014, email from A M Gulas to Tom Vidano, Linda Horowitz, Lisa Zarlenga, David
8 Hubbert, and &PA Green 1, carbon copy to Eileen Shatz, Gary Gray, William Spatz, A M
9 Gulas, &PA Green 2, Kirsten Witter, and William Conroy, bates stamped IRS-000967-977.
10 Attached and marked as Exhibit 17 is a true and correct copy of the May 30, 2014, email.

11 19. Attached and marked as Exhibit 18 is a true and correct copy of select excerpts
12 of the Administrative Record for 26 C.F.R. § 301.7602-1 that the IRS produced in connection
13 with these consolidated cases.

14 20. Attached and marked as Exhibit 19 is a true and correct copy of the “Our
15 Culture” section from Quinn Emanuel’s website (<http://www.quinnemanuel.com/careers/our->
16 culture/why-work-here/), which was downloaded on July 10, 2015.

17 21. Attached and marked as Exhibit 20 is a true and correct copy of John B.
18 Quinn’s biography from Quinn Emanuel’s website (<http://www.quinnemanuel.com/attorneys/>
19 quinn-john-b), which was downloaded on July 8, 2015.

20 22. Attached and marked as Exhibit 21 is a true and correct copy of a December 12,
21 2014, Tax Analysts article, entitled *IRS Budget Cuts ‘Will Be Visible’ in 2015, Koskinen*
22 *Warns.*

23 23. In connection with FOIA Case No. 15-369, the Department of Justice produced
24 a copy of the September 12, 2013, IRS-Boies Schiller Contract, bates stamped Microsoft-
25

1 FOIA000001-61. Attached and marked as Exhibit 22 is a true and correct copy of the IRS-
2 Boies Schiller Contract the Department of Justice produced to Microsoft.

3 24. Attached and marked as Exhibit 23 is a true and correct copy of an August 27,
4 2015, Law360.com article, entitled *Tax Pros Question IRS Use of Microsoft Info at Hearing*.

5 25. Attached and marked as Exhibit 24 is a true and correct copy of IRM Part
6 4.25.12.

7 26. Attached and marked as Exhibit 25 is a true and correct copy of IRM Part
8 4.48.1.

9 27. Attached and marked as Exhibit 26 is a true and correct copy of IRM Part
10 4.41.1.

11 28. Attached and marked as Exhibit 27 is a true and correct copy of IRM Part
12 4.25.12.

13 29. Attached and marked as Exhibit 28 is a true and correct copy of IRM Part
14 4.46.3.

15 30. Attached and marked as Exhibit 29 is a true and correct copy of the transcript of
16 the August 25, 2015, evidentiary hearing in these consolidated cases.

17 31. In connection with FOIA Case No. 15-369, the Department of Justice produced
18 copies of the emails identified below, which illustrate the involvement of IRS TPO attorney
19 advisor Thomas Vidano in the drafting of the temporary regulation 26 C.F.R. § 301.7602-1T.
20 Attached and marked as Exhibit 30 are true and correct copies of emails identified below.

<u>Email Date Range</u>	<u>Microsoft FOIA Document Numbers</u>
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23 June 11, 2013-August 22, 2013 IRS-000147-IRS-000150

24 September 4, 2013-November 14, 2013 IRS-0000269-IRS-000270

1	February 18, 2014-February 21, 2014	IRS-000449-IRS-000454
2	March 19, 2014	IRS-000494
3	February 20, 2014-March 24, 2014	IRS-000495
4	April 29, 2014-April 30, 2014	IRS-000782
5	April 29, 2014-April 30, 2014	IRS-000783
6	May 8, 2014	IRS-000859
7	May 8, 2014-May 9, 2014	IRS-000860

9 32. Attached and marked as Exhibit 31 is a true and correct copy of the Second
10 Declaration of Senior International Advisor Eli Hoory. Case No. 15-102, Dkt. # 40 (The same
11 declaration was filed in Case No. 15-103, Dkt. # 41, but is not attached as an exhibit).

12 33. In September and October 2014, the IRS took the sworn, transcribed testimony
13 of numerous Microsoft employees. Quinn Emanuel lawyers were present for much of that
14 testimony, and regularly entered appearances, on the record, as representatives of the IRS.
15 Attached and marked as Exhibit 32 is a true and correct copy of a pertinent transcript excerpt,
16 which reflects Quinn Emanuel attorney John Gordon's entry of appearance as a representative
17 of the IRS.

18 34. Attached and marked as Exhibit 33 is a true and correct copy of IRS Fact Sheet
19 FS-2006-10, which was downloaded on September 16, 2015, from the IRS website
20 ([http://www.irs.gov/uac/The-Examination-\(Audit\)-Process](http://www.irs.gov/uac/The-Examination-(Audit)-Process)).

21 35. Attached and marked as Exhibit 34 is a true and correct copy of IRS Publication
22 556, which was downloaded on September 16, 2015, from the IRS website (<http://www.irs.gov/pub/irs-pdf/p556.pdf>).

1 36. Attached and marked as Exhibit 35 is a true and correct copy of IRS Publication
2 3114, which was downloaded on September 16, 2015, from the IRS website (<http://www.irs.gov/pub/irs-pdf/p3114.pdf>).

4 37. In connection with FOIA Case No. 15-369, the Department of Justice produced
5 an email chain, bates stamped IRS-000041, starting with a May 9, 2013, email regarding the
6 need “to open a reg file and get the project on the PGP grid” and partially redacted May 14,
7 2013, emails regarding other “options.” Attached and marked as Exhibit 36 is a true and
8 correct copy of the email chain.

9 38. Attached and marked as Exhibit 37 is a true and correct copy of the Declaration
10 of Senior International Advisor Eli Hoory in Support of Petition to Enforce Internal Revenue
11 Service Summons. Case No. 15-102, Dkt. # 1-3.

12 39. Attached and marked as Exhibit 38 is a true and correct copy of the Declaration
13 of Senior International Advisor Eli Hoory in Support of Petition to Enforce Internal Revenue
14 Service Summons filed in *Microsoft Corporation v. Internal Revenue Service*, No. 2:14-mc-
15 00134 (W.D. Wash.), Dkt. #1-3.

16 40. Attached and marked as Exhibit 39 is a true and correct copy of the Declaration
17 of Senior International Advisor Eli Hoory in Support of Petition to Enforce Internal Revenue
18 Service Summons filed in *Microsoft Corporation v. Internal Revenue Service*, No. 2:14-mc-
19 00133 (W.D. Wash.), Dkt. #1-3.

20 41. Attached and marked as Exhibit 40 is a true and correct copy of the “About Us”
21 section from Quinn Emanuel’s website (<http://www.quinnemanuel.com/the-firm/about-us>),
22 which was downloaded on September 16, 2015.

23 42. Attached and marked as Exhibit 41 is a true and correct copy of John R. Luckey
24 et al., Cong. Research Serv., R40641, Inherently Governmental Functions and Department of
25 Defense Operations: Background, Issues, and Options for Congress (July 22, 2009).

* * *

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 18th day of September, 2015.

DANIEL A. ROSEN

/s/ Daniel A. Rosen

DECLARATION OF DANIEL A. ROSEN - 8
(Case Nos. 2:15-cv-00102 RSM & 2:15-cv-00103 RSM)

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CERTIFICATE OF SERVICE

I hereby certify that on September 18, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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